

17 FEB 1972

MEMORANDUM FOR: Director of Personnel

SUBJECT : Irregular Workweeks

REFERENCES : (a) Memo to Exec. Dir-Compt. fr Dir/OP, dtd. 21 Dec 71,
Subj : Non-Standard Work Schedules
(b) Memo to DD/S fr Dir/OP, dtd. 8 Feb 72, Subj : Non-
Standard Workweek - Central Reference Service

1. In the discussions between representatives of our Offices concerning administration of the policies contemplated by reference (a), it was generally understood that we would necessarily get down to complete specifics in the first proposal considered for formal approval.

2. Reference (b) represents that first proposal. There appears to be complete agreement on the following procedural details for administering the policies contemplated:

- a. Each regularly scheduled biweekly administrative work period will be comprised of six 12-hour days and one 8-hour day, the 8-hour day always to be on Sunday; whenever an additional four hours on Sunday is worked, it will be considered overtime subject to the general policies governing overtime entitlements.
- b. The four additional hours (above eight) of a regularly scheduled 12-hour day will not be considered overtime.
- c. Leave will be accrued in a normal fashion based on a regular 80-hour workweek.
- d. Time and attendance reports will be completed in accordance with time actually worked in relation to regularly scheduled work periods (we are working on a set of sample T&A's illustrating various conditions for the guidance of the T&A Clerks).
- e. All portions of regularly scheduled time not worked are to be considered leave; all time worked outside the regular schedule is overtime, subject to the governing policies. Thus absence on a 12-hour workday will result in a 12-hour leave charge; absence on a Sunday workday will result in an 8-hour leave charge.

ADMINISTRATIVE - INTERNAL USE ONLY

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f. An employee's holiday for a holiday falling on any nonworkday will always be the last preceding regularly scheduled workday.

3. There seems to be a lack of agreement on a single facet of the required procedures, i.e., the treatment of holidays for pay and leave purposes. Reference (a) interpreted literally apparently contemplates that an employee working the 12 hours of a regularly scheduled workday which is his holiday will receive 12 hours of holiday pay and conversely an employee who does not work on a holiday which comprises a regularly scheduled 12-hour day will not be charged any leave. We believe this aspect of the proposal should be reexamined both because it seemingly contravenes a specific provision of law, 5 U.S.C.A. 5546, attached; (no formal rationale has been introduced into any discussion of which we are aware for this position) and because it introduces apparently obvious inequities as between employees on 12-hour workdays and employees on 8-hour workdays.

4. More specifically, an employee absent on a 12-hour workday falling on a holiday will, if not charged four hours leave, work only 68 hours for his regular biweekly paycheck instead of 72 hours. There are nine holidays during the year so that if an employee works on none of his holidays, he may work up to 36 hours less time (an employee's holiday may in some circumstances fall on a Sunday in which case he also would have a 72-hour workweek) than would employees on normal work schedules. Conversely employees working a 12-hour workday falling on a holiday will if paid 12 hours holiday time receive more pay than would an 8-hour workday employee who works 12 hours on the same holiday. The latter employee depending upon his grade would receive overtime for the four hours or nothing if GS-12 or above. As another example of the inequity, an employee on the proposed irregular work schedule who is on leave for a full period including a holiday would be charged only 68 hours leave whereas an employee on a regular schedule absent for the same period would be charged 72 hours leave.


5. We believe that employees should be limited to eight hours of holiday pay and that for absences on holidays comprising a 12-hour regularly scheduled workday, four hours leave should be charged. In recognition of the factor that this policy may if employees consistently do not work on holidays represent an uncontrolled use of leave (up to 36 hours), we believe employees could, if desired by management, be scheduled to work up to a corresponding amount of overtime to be reported as compensatory time. It is suggested this practice be extended to employees GS-12 and above as an exception to established policies.

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6. Should there be agreement on the above recommendations, there follows suggested substitute language for paragraph 4c of reference (b):

Employees who perform directed work on a holiday would receive holiday pay for hours worked within regularly scheduled time not in excess of eight; scheduled time on a holiday in excess of eight must be worked or charged as leave or compensatory time. Employees charged leave in such circumstances may be authorized to work a corresponding amount of overtime for credit as compensatory time, without regard to grade. When a holiday falls on a nonworkday, the preceding workday will be considered the holiday.

7. We shall be glad to discuss this matter with you in greater STATINTL detail.


Acting Director of Finance

Attachment
5 U.S.C.A. 5546

Ch. 55

PAY ADMINISTRATION

5 § 5546

That the 15% premium compensation under this section would often work out to less than straight time for alcohol and tobacco tax investigators did not preclude coverage. *Id.*

Premium compensation for overtime work by government employee when hours of duty cannot be controlled administratively and regularly scheduled overtime relate to independent, mutually exclusive methods for compensating two distinct forms of overtime work. *Burleigh v. U. S.*, Ct.Cl.1966, 360 F.2d 984.

Where United States deputy marshal received regular assignments which resulted in erratic and irregular periods of overtime work, his additional duty hours represented administratively uncontrollable overtime rather than regularly scheduled overtime and were compensable by premium payments rather than overtime pay. *Id.*

Claim by federal deputy marshal for compensation owing for annual leave forfeited due to necessary work and time allowed for sick leave earned but unused did not support claim for overtime compensation. *Id.*

Where civil service employees of Civil Defense Administration served many of their duty officer tours at night at control center, they were entitled to night pay differential in addition to regular overtime compensation. *Itapp v. U. S.*, 1941, 340 F.2d 635, 167 Ct.Cl. 982.

The removal of investigators of Alcohol and Tobacco Tax Division, Internal Revenue Service, in San Francisco and Omaha regions from purview of this section's provision for 15% premium overtime, while investigators of other seven regions were being compensated under the same Act, was arbitrary and unreasonable in view of established record of overtime performed by such investigators under compulsion of duty and directive.

Byrnes v. U. S., 1961, 330 F.2d 980, 163 Ct.Cl. 167.

Investigators whose hours of duty could not be controlled administratively, and whose position required substantial amounts of irregular, unscheduled overtime, night and holiday duty were entitled to annual premium pay of 15% in lieu of overtime. *Id.*

Where tour of duty of fire fighters at various army posts was sixty hours a week, consisting of two twenty-four-hour shifts and one twelve-hour shift during which they were required to remain at their posts of duty, fire fighters, who were presumed to spend twenty hours of time in eating and sleeping, were not entitled to compensation for more than forty hours per week prior to November 1, 1951 in view of fact that amount of labor performed by them within twenty-hour period was inconsequential. *Bean v. U. S.*, Ct.Cl.1959, 175 F.Supp. 160.

Where federal employee, correctional officer in charge of cottage in which inmates of women's reformatory lived, in addition to 40 hour week had to remain overnight at cottage on alternate nights during which time she was subject to call of individual inmates and to outside telephone calls from officer of the day, hospital and guards, employee was "on duty" and entitled to nighttime differential and overtime pay. *Farley v. U. S.*, 1955, 127 F.Supp. 562, 131 Ct.Cl. 776.

Where an immigration inspector is expected to complete his assignments and such completion can only be accomplished by working overtime, a fact well known by the Immigration Service officials who, as a matter of policy withheld written authorization or approval of such overtime, the inspector has been induced to work overtime and should be paid. *Adams v. U. S.*, 1963, 162 Ct.Cl. 766.

§ 5546. Pay for Sunday and holiday work

(a) An employee who performs work during a regularly scheduled 8-hour period of service which is not overtime work as defined by section 5542(a) of this title a part of which is performed on Sunday is entitled to pay for the entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay.

(b) An employee who performs work on a holiday designated by Federal statute, Executive order, or with respect to an employee of the government of the District of Columbia, by order of the Board of

5 § 5546**EMPLOYEES****Ch. 55**

Commissioners of the District of Columbia, is entitled to pay at the rate of his basic pay, plus premium pay at a rate equal to the rate of his basic pay, for that holiday work which is not—

(1) in excess of 8 hours; or

(2) overtime work as defined by section 5542(a) of this title.

(c) An employee who is required to perform any work on a designated holiday is entitled to pay for at least 2 hours of holiday work.

(d) An employee who performs overtime work as defined by section 5542(a)¹ of this title on a Sunday or a designated holiday is entitled to pay for that overtime work in accordance with section 5542 (a) of this title.

(e) Premium pay under this section is in addition to premium pay which may be due for the same work under section 5545(a) and (b) of this title, providing premium pay for nightwork. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 488; Pub.L. 90-83, § 1(29), Sept. 11, 1967, 81 Stat. 201.

¹ So in original.

Historical and Revision Notes**Reviser's Notes****1966 Act**

Derivation: United States Code
5 U.S.C. 922

Revised Statutes and Statutes at Large
June 30, 1945, ch. 212, § 302, 59 Stat. 298.
May 24, 1946, ch. 270, § 11, 60 Stat. 218.
Sept. 1, 1951, ch. 1208, § 207, 65 Stat. 1110.
July 18, 1966, Pub.L. 89-554, § 1, 80 Stat. 297.

Explanatory Notes.

In subsections (a) and (b), the word "officer" is omitted as included in "employee".

In subsections (b) and (c), the word "designated" is substituted for "such a" and "such" in former section 922(b) and (c) to identify the holiday as one design-

nated by statute, Executive order, or the Board of Commissioners of the District of Columbia.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 Act

Section of title 5	Source (U.S.Code)	Source (Statutes at Large)
5546(a)	5 App.: 921a	July 18, 1966, Pub.L. 89-504, § 405(b) (1), (c), 80 Stat. 297.

In subsection (a), the words "An employee who performs * * * work * * * is entitled to pay * * * at the rate of his basic pay" are coextensive with and substituted for "Any * * * service * * * performed * * * shall be compensated * * * at the rate of basic compensation of the officer or employee performing such

work." The words "section 5542(a) of this title" are substituted for "section 201 of this Act" to reflect the codification of that section in title 5, United States Code. The words "between midnight Saturday and midnight Sunday" are coextensive with and substituted for "within the period commencing at midnight Saturday and ending at midnight Sunday".